

1 National Gypsum? For your claims estimates?

2 A My forecast -- both the values of the  
3 pending claims and the forecasts for and values of  
4 the future claims were based upon disaggregated  
5 claims by disease and by occupation both. So it's a  
6 cross-tab. So there were four occupational  
7 categories times each of the disease categories.

8 Q You didn't do that in your analysis  
9 reflected in Exhibit 1; is that true?

10 A That's not true.

11 Q Okay. You did a sensitivity analysis?

12 A No.

13 Q Okay. What is true with regard to what  
14 you did about aggregation or disaggregation by  
15 occupation and disease type?

16 A We disaggregated. Look at page 12. Look  
17 at page 24. It's a flawed method. With what I know  
18 now, I wouldn't use it if I put myself back there.  
19 But we did it primarily because we had done it in  
20 National Gypsum.

21 Q The trend in that time period was that  
22 insulators and shipyard workers were expected to be  
23 going down in numbers; was that correct?

24 A Are you looking at a particular page, or  
25 are you just asking me?

1 Q I'm asking you if you recall the trends,  
2 but you can look at a page if you want to.

3 A You're speaking of the epidemiology or the  
4 claims filings?

5 Q I'm talking about your projections. I  
6 believe it is based on epidemiology.

7 A I don't have the annual numbers of filings  
8 or the reforecast by disease -- by occupational  
9 groups here with me. I don't have the epidemiology  
10 broken down. But the incident of asbestos-related  
11 cancers peaked earlier for shipyard workers than it  
12 did for insulators, which in turn were earlier than  
13 the other two categories. So that would have had  
14 the effect you were talking about.

15 Q Construction workers were expected to have  
16 more claims going forward in 1992; wasn't that true?  
17 Claims were expected to go up for construction  
18 workers?

19 A You're talking about trends or absolute  
20 numbers? Because your question asked both.

21 Q Well, I think I'm talking about as a  
22 percentage of the claims as well as absolute  
23 numbers, but if there's a difference, you can let me  
24 know that.

25 A Sitting here right now, I can't recall

1 what the relative absolute numbers of these claims  
2 were. Let me look at the forecast. Just a second.  
3 I don't think construction workers would have been  
4 the largest in terms of absolute numbers.

5 Q Ever?

6 A I think not, but I can't answer that with  
7 certainty.

8 Q Do you know for GAF what occupations had  
9 the greatest exposure to the products that generated  
10 the most litigation?

11 A Well, historically, most of their claims  
12 came from this amorphous "other" category. They  
13 were neither shipyard insulators or construction  
14 workers. That's a category within the dynamic  
15 category as it's called within the CCR database.  
16 This is page 17 -- these are the pending claims, but  
17 I think it reflects reasonably well the --

18 Q Do you know which product by name of GAF  
19 was the source of most of the claims as of 1994?

20 A I have -- I provided a list of the  
21 products here. I can't tell you specifically which  
22 product had the most claims, no. I don't know that  
23 that's -- one could ascertain that.

24 Q How would you go about ascertaining that?

25 A I don't think you could.

1           Q     Shipyard workers were typically claimants  
2 exposed during the earlier time periods than these  
3 studies often during the 1940s; isn't that right?

4           A     Could you read the question?

5           MR. FINCH: Object to form.

6           (The reporter read the record as  
7 requested.)

8           THE WITNESS: I don't understand that  
9 question.

10          BY MR. MILLER:

11          Q     Shipyard workers were generally exposed  
12 during the war years; isn't that true?

13          A     There were a lot of shipyard workers that  
14 were exposed during the war years. There were a lot  
15 of shipyard workers that were exposed in subsequent  
16 years. The absolute number exposed in each -- there  
17 was a higher concentration, I think, on an annual  
18 basis of employment with exposures in the period  
19 between 1941 and 1945.

20                But if you add all the persons who were  
21 exposed to shipyards before and after 1945, I don't  
22 know whether you'd find that to be the -- that most  
23 of them were shipyard -- were war-year exposures. I  
24 haven't looked at that. I'm not sure how that would  
25 pan out.

1 Q By 1993, the frequency of shipyard worker  
2 claims had begun to go down some, hadn't it?

3 A It may have. Sitting here right now, I  
4 don't have a definite answer to that. Propensities  
5 to sue were going up, but the incidents -- by 1993?  
6 The incidents would have peaked earlier. So it just  
7 depends upon what those two -- was the increase in  
8 the propensity to sue greater than the decline in  
9 the incidents? I just can't tell you.

10 Q Do you recall dealing with the frequency  
11 of shipyard worker claims in your testimony in  
12 National Gypsum?

13 A Yes.

14 Q Do you recall what you said?

15 A No. I said a lot of things about  
16 shipyard. I certainly don't recall everything I  
17 said.

18 Q Do you recall whether you said, during  
19 your National Gypsum testimony that the frequency of  
20 shipyard worker claims had begun to go down some?

21 A One, I don't recall that, and two, that  
22 would be with regard to National Gypsum, I think,  
23 unless I was making a general description.

24 Q My question was --

25 A But I don't know what I said. So no, I

1 don't recall that. No, I don't recall.

2 Q My question is whether you recall saying,  
3 with regard to National Gypsum, that the frequency  
4 of the shipyard worker claims had begun to go down  
5 some.

6 A I don't recall that.

7 Q Okay. If it's all right with you, I  
8 thought rather than mark these transcripts, we'll  
9 give you a copy. We can just look at them.  
10 Otherwise, they'll just generate a forest worth of  
11 extra paper.

12 MR. FINCH: We don't need to mark them as  
13 exhibits.

14 THE WITNESS: Thank you.

15 BY MR. MILLER:

16 Q I'm directing your attention to transcript  
17 of proceedings. These are kind of funny because  
18 they're renumbered each day. So you have to look at  
19 the day. This is volume 2 on January 21, 1993.  
20 It's not actually necessarily volume 2 of your  
21 testimony.

22 Let me direct your testimony to page 28.  
23 Certainly, read as much as you want to, but what I  
24 wanted to call your attention to to try to refresh  
25 your recollection is a reference you're making to

1 Exhibit AC40, and there is a question on line 5 that  
2 has an answer that goes on for --

3 A A while.

4 Q -- a long time. In the interest of  
5 efficiency, I'm just going to direct your attention  
6 to the first paragraph. You can read as much of it  
7 as you'd like to. Please tell me when you've read  
8 it, and then I'll ask you a question about it.

9 A All right. I've read this paragraph of my  
10 answer beginning at line 7, page 28.

11 Q In talking about a CCR data tape for June  
12 of 1992; is that right?

13 A That was the data we had. It had data  
14 running through 1991, yes.

15 Q Do you still have a copy of that data  
16 tape, by the way?

17 A We may. I don't know.

18 Q Did you use it at all in your work in this  
19 engagement reflected by Exhibit 1?

20 A No.

21 Q You say that that describes filings  
22 against National Gypsum by occupation; is that  
23 correct?

24 A That's what I said, yes.

25 Q And you say that there's somewhat

1 different trends by occupation in the data; is that  
2 also correct?

3 A Yes. It's correct that that's what I  
4 said, yes. It's probably also correct.

5 Q All right. Well, line 11 through line 13  
6 has a sentence that says "shipyard workers are  
7 typically claimants who are exposed among the  
8 earliest time period frequently in the '40s."

9 Do you see that sentence?

10 A Yes.

11 Q Do you believe that was a correct  
12 reflection of what you were seeing in that data  
13 tape?

14 A I think that -- I don't think the data  
15 tape would have answered that question.

16 Q Was that your belief at the time as to  
17 what you were seeing generally in the asbestos  
18 litigation environment in 1993?

19 MR. FINCH: Object to form.

20 THE WITNESS: Sorry. Could you repeat the  
21 question?

22 BY MR. MILLER:

23 Q Yeah. Is that a reflection of what you  
24 were seeing generally in that time period in  
25 asbestos claims patterns?



1           A     The this point in time, I wouldn't have  
2     had many data sets. So I wouldn't have had much  
3     general experience. I would have had this,  
4     Eagle-Picher, maybe some from Manville. I think  
5     this is the first case I testified on an estimation.  
6     With all due respect to myself, I think that's a  
7     poorly articulated sentence. I'm not sure quite  
8     what I meant or that I was even quite sure what I  
9     meant when I said it.

10           Q     Do you disagree with it now?

11           A     I don't understand it.

12           Q     Good. I thought it was just my questions  
13     that you were having trouble understanding.

14           A     No. I find some of the most perplexing  
15     things I read are things I've said. The  
16     epidemiology is based upon data that indicates that  
17     the pattern of exposures among shipyard workers tend  
18     to be earlier than the other occupational groups.  
19     That's pretty unambiguous, and hopefully my  
20     answer -- my statement was understandable in  
21     contrast to this.

22                     But that doesn't necessarily mean that the  
23     claimants were concentrated in that period of time,  
24     and I don't know what "typically claimants who were  
25     exposed" means. So I find it an inartful sentence,

1 and I'm sorry I said it.

2 Q At the bottom of page 28 and the top of  
3 page 29 -- and I realize that's beyond what I asked  
4 you to read --

5 A I'm flexible.

6 Q -- it has a sentence that I'd like to  
7 direct your attention to, that carryover sentence.  
8 So why don't you read --

9 A I'll read that whole paragraph.

10 Q Why don't you read that whole paragraph,  
11 and tell me when you've done that.

12 A Thank you.

13 I've read that sentence -- that paragraph  
14 rather.

15 Q The sentence that carries over says "and  
16 you can see there that where shipyard workers are  
17 going down, construction workers are going up."

18 Did I read that right?

19 A Yes.

20 Q What do you think that meant?

21 A I think that's number of filings.

22 Q That's consistent with the epidemiology as  
23 it was perceived in early 1993, isn't it?

24 A That's my recollection, yes.

25 Q And you noticed a trend over that previous

1 five to 10 years that construction claims had been  
2 filed in increasing numbers; isn't that correct?

3 A Without having the data in front of me, I  
4 can't answer that question, but I have to -- I just  
5 have to insert that I don't regard the -- these  
6 occupational categories by -- collected by CCR as  
7 being very reliable.

8 Q Why is that?

9 A Well, first of all, because they produce  
10 some absurd propensities to sue for insulators, and  
11 secondly, it's just in the nature of the kind of  
12 information that collected. How they get  
13 categorized is -- I don't have confidence in the  
14 quality of the data entry for this category. It's  
15 one of the reasons why I wouldn't use this kind of  
16 analysis if I were writing on a clean slate today  
17 and did in section 7.

18 Q What are the absurd propensity to sue for  
19 insulators that you're referring to in that answer?

20 A Absurd is probably too strong a term, but  
21 unlikely. They produce propensities to sue that  
22 exceed 100 percent across a series of years for  
23 insulators. Now -- I mean, that's possible -- for  
24 meso. That's not unexpected for other cancers or  
25 lung cancers, but for mesos, you wouldn't expect it

1 for an extended number of years, that more people  
2 would be filing claims than presumably were getting  
3 the disease. And the reason that happens is because  
4 how CCR enters the information describing the work  
5 category of insulator is probably different from how  
6 Nicholson and his colleagues use the term in their  
7 epidemiology work.

8           Nickelson was sticking pretty closely to  
9 people that were in the union; whereas, CCR appears  
10 to be using -- categorizing someone as an insulator  
11 even if they worked in a different union and a  
12 different setting. So there appears to be an  
13 inconsistent use of the terms in the epidemiology  
14 and in the claims database that makes a comparison  
15 of the two troubling.

16           Q     Do you know if CCR characterized them as  
17 insulators on its own or if it relied upon what the  
18 plaintiffs claimed their occupation was when they  
19 filed the claim?

20           A     I believe it's a -- it would have been a  
21 combination of both things. There's a judgment --  
22 there's entry of information by the on the complaint  
23 or by the law firm, but there's also judgment on how  
24 the data gets entered into the database invariably.

25           Q     Insulators received higher settlements

1 than many other categories, didn't they?

2 A From whom?

3 Q From the CCR.

4 A I haven't looked at that.

5 Q If they did, which I believe is correct,  
6 hypothetically, wouldn't that create some incentive  
7 for plaintiffs to categorize themselves as  
8 insulators if they had a choice?

9 A If your premise is true, it certainly  
10 would have created -- and the law firm knew it,  
11 which it presumably would have, it would have  
12 created an incentive to label workers as insulators,  
13 particularly if in doubt, and that's another reason  
14 to question the integrity of the information and not  
15 cause -- cause me not to -- if that's true, cause me  
16 not to want to rely upon the CCR categories for  
17 purposes of making forecasts.

18 MR. MILLER: How long have we been going?

19 VIDEO OPERATOR: We've been on the record  
20 for about an hour.

21 MR. MILLER: Why don't we take a break.

22 VIDEO OPERATOR: We're off the record.

23 The time is approximately 3:18 p.m.

24 (Recess.)

25 VIDEO OPERATOR: We are back on the

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1 record. The time is approximately 3:42 p.m. This  
2 is the beginning of tape number 4.

3 BY MR. MILLER:

4 Q Let me ask you to turn, please, with me in  
5 your report, Exhibit 1, if you have it.

6 A I have it.

7 Q To page 7.

8 A I have that.

9 Q I'd like to ask you to read the first full  
10 paragraph to yourself under section 4, the one that  
11 starts "this report forecasts."

12 A Sure.

13 I've read that paragraph.

14 Q You're explaining here what you've done in  
15 the two different parts of your report, one through  
16 section 6 and one beginning in section 7?

17 A And one in section 8 as well.

18 Q Beginning in section 7. In the middle you  
19 say that "the 1993 data showed trends of increasing  
20 GAF cancer claim filings, nonmalignancy claim  
21 filings and settlement filings some of which were  
22 inconsistent with the in that era, and that required  
23 further exploration."

24 That's a part of a sentence, but did I  
25 read that correctly?

1 A Yes, you did.

2 Q You then say "as of 1993, the meaning of  
3 these trends was uncertain: Did they represent the  
4 beginnings of long-term trends that would increase  
5 GAF's liability? Or were they simply perturbations  
6 that had no long-term significance?"

7 Did I read those sentences correctly?

8 A Yes, did, and I love the emphasis you put  
9 on it.

10 Q What are perturbations?

11 A Disturbances.

12 Q From a data standpoint, what is the  
13 significance of figuring out whether something is a  
14 perturbation or a long-term trend?

15 A Well, you would expect -- well, a  
16 long-term trend is kind of self-explanatory, I  
17 think. Perturbations are just -- maybe, may or may  
18 not be one-time events that have no bearing upon  
19 what one would expect to happen over the long term.

20 Q In your work in the asbestos estimation  
21 area, have you seen some examples of perturbations  
22 in the data before?

23 A Yes.

24 Q Can you give me some examples of what  
25 turned out to be a perturbation, in your view?

1           A     The 1989 claim filings against the  
2     Manville trust. They got something like 100,000  
3     claims in that year. No one had gotten that level  
4     of claims before. It was another decade before that  
5     level of claims were reached elsewhere. That was a  
6     perturbation. The surge you asked me about earlier  
7     for the Fibreboard cases would probably have been a  
8     perturbation.

9           Q     Those being the maritime legal clinic  
10    claims you're talking about or --

11          A     Plus, just kind of a filing of claims that  
12    just didn't look very high quality in order to try  
13    and get in on the money that was being generated by  
14    the settlement with the insurance companies. Those  
15    are examples.

16          Q     As a forecaster, have you found that  
17    sometimes passage of time helps clarify whether  
18    something say trend or a perturbation?

19          A     Passage of time denotes that you have  
20    information about trends. So at time point 1,  
21    you're not sure whether or not you've got a trend,  
22    and you could look at it 10 years later. You can  
23    see if, you know, in fact it turned out to have been  
24    a trend.

25                So clearly, since trends are timebound,



1 they define the events that change over time. Of  
2 course, the more time you have, the better you can  
3 understand it. Things that seem to be one-time  
4 events, if they recur, then it's probably not a  
5 one-time event, or it's something that has a cause  
6 that may be episodic as opposed to a one-time event.  
7 So sure, more information always helps.

8 Q Turn with me to page 8, and look at the  
9 first full paragraph at the bottom. I'm going to  
10 read a sentence, and you can tell me if I read it  
11 correctly, the one that starts with the  
12 word "first."

13 Do you see that?

14 A I see that.

15 Q "First, the BMCA transactions occurred  
16 first when the GAF's claims filings and settlement  
17 values were increasing, but it was not possible at  
18 that time to understand the significance of those  
19 increases, because information about GAF that would  
20 have clarified these trends was cut off by the  
21 Georgine class action."

22 Did I read that correctly?

23 A Yes.

24 Q Could you explain how the Georgine class  
25 action operated to cut off information that would

1 have clarified the trends?

2 A I'm going to read the paragraph preceding  
3 to myself.

4 First of all, there was a stay against  
5 filing claims that was entered by the District  
6 Court. So that cut off the information about  
7 continued filings, other than filing claims subject  
8 to the Georgine class action. The changes in tort  
9 value of claims couldn't be examined either with the  
10 stay, because they were no longer settling claims in  
11 tort.

12 Anything that got resolved after that stay  
13 was entered would have been claims that were  
14 resolved subject to the terms of the Georgine  
15 settlement. So as we discussed many hours ago now,  
16 those were in the nature of contract resolutions,  
17 not tort claims. So all of that ended when the  
18 Court entered its stay.

19 Q Was there any requirements that a  
20 plaintiff holding back a claim because of the  
21 injunction had to notify the potential defendants  
22 that they would have filed a claim except for that  
23 injunction?

24 A I'm not aware of that.

25 Q In other words, people didn't have to make

1 a reservation and say I would have filed a claim,  
2 but I'm enjoined, so I'm not filing it now?

3 A No, that's not my understanding.

4 Q You're not aware of any database that had  
5 been generated at that point in time of all the  
6 claims that might be sitting in some plaintiffs' law  
7 firm's files not yet worked up because of the  
8 Georgine injunction, are you?

9 A The Georgine injunction didn't have  
10 anything to do with working claims. It had to do  
11 with filing claims and paying them in the tort  
12 system.

13 Q Maybe my question wasn't good. Let me try  
14 it again. You're not wear of any database at the  
15 time that would say what claims were waiting to be  
16 filed as of January 1994 but for the Georgine  
17 injunction?

18 A You can't identify them, because it's the  
19 filing of the claim that is the -- the event that's  
20 being prevented by the operation of the court stay  
21 is what would identify them. You would look, I  
22 guess, at claims filings against some of the other  
23 defendants and make inferences about what fraction  
24 of those claims might have been filed against GAF or  
25 CCR members. Claims continued to be filed against

1 other defendants.

2 Other things were going on at the time.  
3 Remember, the Manville trust wasn't paying any  
4 money. So you couldn't really look to the Manville  
5 data to reflect kind of a parallel experience. But  
6 that's the best one could do, I think, looking to  
7 other defendants.

8 Q But you don't recall actually performing  
9 that analysis yourself in 1994 to try to figure out  
10 what claims might be accruing out there because of  
11 Georgine, do you?

12 A Actually, CCR did a survey of plaintiffs'  
13 law firms and asked them what claims were being  
14 withheld by them and they came to a number. Now, I  
15 don't know if they did that in 1994, but at some  
16 point, they provided information like that to their  
17 members.

18 Q Do you know when they did that? You say  
19 you don't know for sure?

20 A I don't know when they started doing it.

21 Q Where would a copy of that be located, if  
22 you were going to try to find it?

23 A To the degree it was shared with members  
24 of the CCR, GAF may have a copy of it.

25 Q Do you have a copy of it?

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1           A     I don't have a copy of the document, but I  
2     was told by Dee Hilton that -- of this project done  
3     by the center of claims resolution and how their  
4     estimation of how many claims might be accruing.

5           Q     When were you told by Dean Hilton?

6           A     Dee.

7           Q     Dee.

8           A     Dee, Dee, Dee.

9                 I don't recall the date I was told.

10          Q     Do you know when the injunction was lifted  
11     in Georgine?

12          A     It was shortly after the Supreme Court's  
13     decision which was, I think, at the end of June  
14     1997. It was some time in the next month or two.

15          Q     I think you say on the top of page 9 that  
16     by December of 1998 -- this is the first full  
17     sentence at page 9. "By December 31, 1998, most  
18     claims and settlements that are accrued until the  
19     period of the injunction had been filed."

20                 Did I read that correctly?

21          A     Yes.

22          Q     So what you did, it's my understanding, in  
23     the second part of the report, beginning with  
24     section 7, was to look at the data you could get  
25     after that date to try to figure out -- or as of

1 understand the significance of those increases;  
2 right?

3 A I don't think you could fully understand  
4 is probably a better word. They're ambiguous.  
5 They're ambiguous, uncertain.

6 Q In the National Gypsum case, you used a  
7 most probable analysis based on a decreasing  
8 propensity to sue; isn't that correct?

9 A Well, I had, as I said earlier, a range of  
10 estimates, 16 or so which I provided the Court, and  
11 it ultimately got me to agree that I provided all of  
12 these in order to let the Court or anybody who  
13 wanted to make whatever combinations of assumptions  
14 they wanted to make with regard to those that I  
15 presented. But I think I testified that it was my  
16 opinion that for National Gypsum, in January 1993,  
17 that there was more likely to be a decrease in the  
18 propensity to sue, yes, based on the data that I  
19 have available to me, which was data through 1991.

20 Q Your Fibreboard testimony was late in  
21 1994; isn't that true?

22 A It was some time during 1994. I don't  
23 recall the date.

24 Q Do you recall what your most probable  
25 scenario was on propensity to sue in terms of

1 increasing, decreasing, or flat for your Fibreboard  
2 preferred analysis?

3 A I had combinations of -- the Fibreboard  
4 analysis is very complicated. It had two different  
5 periods of time that I used as the base period for  
6 forecasting propensities to sue, and it had -- I  
7 don't think there was an increasing propensity to  
8 sue in that case. I think there was a decrease --  
9 decreasing propensity to sue and a flat propensity  
10 to sue. There were a complex set of assumptions  
11 about nonmalignant claims.

12 I think a declining multiplier but then  
13 adding in claims that were going to be a part of  
14 what I called a temporary surge -- temporary surge  
15 or acceleration, I guess it was, and a permanent  
16 acceleration, which had the effect of essentially  
17 adding to or increasing the numbers of nonmalignant  
18 claims over the next five or six years. So it was  
19 really a complicated set of forecasts, and I don't  
20 recall which of those that I said was --

21 Q As you say, in Fibreboard, you did not use  
22 an increasing propensity to sue model as a preferred  
23 model; is that true?

24 A I think that's correct, yes.

25 Q When did you first give testimony, either